

REMARKS

Claims 11, 21, and 54 have been corrected to show all the changes made to the claims in the previous submitted amendment filed January 22, 2008. No new matter has been added.

Arguments presented in January 28, 2008 Amendment:

The Office Action dated September 21, 2007 has been received and reviewed by the applicant. Claims 1-74 are pending in the application. Claim 46 has been cancelled. Claims 41, 42, 44, 51-53 and 69-72 are withdrawn from consideration and claims 1-40, 43, 45-50, 54-68, 73 and 74 stand rejected. Claims 1, 11, 19, 21-38, 43, 45 and 54 have been amended. No new matter has been introduced.

Claim Rejections – 35 U.S.C. § 101

Claims 21-26, 27-31, 32-37 and 43 stand rejected under 35 USC 101 because the claimed “computer readable medium” has been defined in the specification (page 19) as being downloadable over a network connection and could be equated to a “wave”, etc. Applicant has amended the preamble to the noted claims in order to add structure and now the noted claims recite “a computer readable storage medium” which should be enough to overcome the noted rejections given that structure has been introduced.

Claim Rejections – 35 U.S.C. § 112

Claims 21-26 and 36 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 has been amended in view of the Examiner’s constructive comment and as amended is believed to place the claim in condition to overcome the noted rejection. Claims 22-26 and 36 are also believed to be in condition to overcome the noted rejection given that they depend on claim 21.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 2, 8-12, 18-21, 26-29, 45-48, 55-64, 67 and 68 stand rejected under 35 USC 102(e) as being anticipated by Holub (US Patent No. 6,750,992). Claims 54 and 73 stand rejected under USC 102(b) as being anticipated by McLaughlin et al, (US Patent No. 5,739,809).

Applicant would like to thank the Examiner for the further clarification of the claim rejections in view of the Board of Patent Appeals and Interferences (BPAI) decision rendered on March 20, 2007. Although applicant, as well as the BPAI (see page 5 of the BPAI decision where the BPAI states: “Even if we assume that the color preferences may be considered a “viewing condition” for an image, we find no description of displaying an image “subject to satisfaction of the viewing condition”) believe that the cited Holub reference fails to anticipate claim 1 as drafted, in order to expedite prosecution of the present application, applicant has amended claim 1 to clarify the claim and now claim 1 recites in part:

“a viewing station that receives the image and the viewing conditions from the computer and automatically, displays the image if the viewing conditions are met at the viewing station and does not display the image if the viewing conditions are not met”.

The cited Holub reference fails to teach or suggest automatically displaying an image if viewing conditions sent with an image are met and not displaying the image if the viewing conditions are not met as recited in claim 1. The Holub reference in column 48, line 56 to column 49, line 4 fails to teach or suggest the above. There is no mention in Holub that an image is not displayed automatically because viewing conditions sent along with an image are not met. Holub simply mentions that rendering devices in the system may be disqualified by network users if the rendering devices cannot match a system wide criteria. This is much different than making a determination as to whether or not to display a particular image based on viewing conditions that are sent along with the image, conditions that need to be met or the particular image is not displayed. Furthermore, in Holub a user may decide not to disqualify their rendering devices even if the system wide criteria is not met by their device, something which the present invention would not allow. Also, unlike system wide minimum criteria's

as used in Holub, in claim 1, it is viewing conditions sent along with an image that make the determination, which makes for a more robust system given that for example, one image may be automatically displayed at a particular device if its viewing conditions are met, and a second image may not be displayed if its viewing conditions which may be different are not met. In view of the above, it is believed that independent claim 1 and dependent claims 2-10, 54-56 that add further nonobvious features are in condition for allowance.

Independent claim 11 has been amended to clarify that the image is restricted automatically if the view conditions are not satisfied at the viewing station. Similar to the comments above, the cited Holub reference fails to teach automatically restricting an image using viewing conditions sent along with the image. In view of the previous comments made, it is believed that claim 11 as well as claims 12-18 and 57-58 which depend on claim 11 are in condition for allowance.

Independent method claim 19 has been amended in similar fashion to claim 1 and as such is also believed to be in condition for allowance in view of the above remarks. Dependent claims 20 and 59-60 are also believed to be in condition for allowance given that they depends on claim 19.

Independent claim 21 has been amended in similar fashion and is believed to be in condition for allowance in view of the comments made above, dependent claims 22-26 and 61-62 which add further nonobvious features are also believed to be in condition for allowance.

Independent claim 27 has been amended in similar fashion to some of the above claims and as amended is believed to be in condition for allowance in view of the above comments. Dependent claims 28-31 and 63-64 are also believed to be in condition for allowance.

On page 9 of the current office action it states "Furthermore, it is clear that the image is displayed at the viewing station subject to satisfaction of the viewing conditions at the viewing station because the fact that the image and the way in which the image appears on the display depends on rendering instructions that the viewing station has received and on the state of calibration of the display itself". The cited Holub reference clearly fails to teach or suggest that the criteria for whether or not an image is displayed is subject to satisfaction of a viewing condition as recited in claim 1 and as taught in the present application. Given that

the cited reference fails to teach or suggest such a limitation and given that the BPAI in its decision came to the same conclusion on this exact point with regard to the cited reference, claim 1 is believed to be in condition for allowance. The BPAI also came to the same conclusion with regard to the cited Holub reference regarding independent claims 11, 19, 21, 27, 32, 38, 45 and 54 (see last paragraph of page 5 of the BPAI opinion), in view of this, it is believed that claims 11, 19, 21, 27, 32, 38, 45 and 54 are also in condition for allowance.

With regard to independent claim 45, it is also believed to be in condition for allowance in view of the above comments and given that it has been amended to recite that if the viewing conditions have not been met, then the image is automatically not displayed. As previously mentioned, Holub simply teaches providing a system wide criteria which users can use to turn off their rendering stations, nowhere does Holub teach or suggest automatically not displaying an image based on viewing conditions that are sent with the image that are not met. Claims 47-50 and 67-68, which depend on claim 45, are also believed to be in condition for allowance given that they add further nonobvious limitation to claim 45.

Independent claim 54 was rejected in view of the cited McLaughlin reference. In view of the fact that McLaughlin fails to teach or suggest “a viewing station that receives the folder and the viewing conditions and displays one or more of the images in the folder image if the viewing conditions are met at the viewing station and does not display the one or more images if the viewing conditions are not met” it is believed that claim 54 is in condition for allowance. In page 15, paragraph no. 8 of the office action, it is mentioned that McLaughlin teaches “displays one or more of the images in the folder subject to satisfaction of the viewing conditions at the viewing stations” in view of that mentioned in column 5, lines 5-15. Col. 5, lines 50-51 simply mentions that the monitor can be programmed with one of a number of color management system software. No mention can be found in the reference of not displaying one or more images if viewing condition provided with the one or more images are not met and displaying the one or more images if the viewing conditions are met. As such claim 54 and dependent claims 73 and 74 which depend on claim 54 are also believed to be in condition for allowance.

Claim Rejections – 35 U.S.C. § 103

Claims 3-5, 13-15, 22-24, 32, 33, 36, 37, 65 and 66 were rejected under 35 USC 103(a) as being unpatentable over Holub in view of Harshbarger, Jr. et al, (US 2003/0001956). Claims 6, 16, 17, 25, 30 and 49 stand rejected under 35 USC 103(a) as being anticipated over Holub in view of Flessland et al, (US Patent No. 6,667,803). Claims 7, 31 and 50 stand rejected under 35 USC 103(a) as being unpatentable over Holub in view of Kelly et al (US Patent No. 6,628,329) and further in view of McLaughlin, et al (US Patent No. 5,739,809). Claim 34 stands rejected under 35 USC 103(a) as being unpatentable over Holub in view of Harshbarger, Jr. et al, and further in view of Flessland et al. Claim 35 stands rejected under 35 USC 103(a) as being unpatentable over Holub in view of Harshbarger, Jr. et al and further in view of Kelly et al and McLaughlin et al.

Claims 38-40 and 43 stand rejected under 35 USC 103(a) as being unpatentable over McLaughlin et al in view of Flesland et al. Claim 74 stands rejected under 35 USC 103(a) as being unpatentable over McLaughlin et al in view of Holub.

Note that only the remaining claims which have not been addressed in the previous section are addressed below.

With specific regard to independent claim 32, it has been amended to clarify the claim language. In view of the previous comments made above, it is believed that the combination of Holub and Harshbarger taken individually or in combination fail to teach or suggest that which is claimed. It should also be mentioned that in Holub the viewing conditions are not associated with an image file as recited in claim 32. Holub simply teaches establishing a criteria in which all devices in the system need to met and then it is up to each individual user whether to disqualify their rendering devices. Holub does not mention that images are restricted automatically if the viewing conditions are not met, etc. The Harshbarger reference simply teaches performing a user run test routine on a system to determine if the display is properly functioning, if the user is not able to properly identify symbols during the test, the controller can then suspend operation of the display. Again this is much different than that which is claimed wherein an image file and viewing conditions for the image file are provided and the viewing of the image data of the image file are automatically restricted if the

viewing conditions are not met. Claim 32 and dependent claims 33-37 and 65-66 are therefore believed to be in condition for allowance.

With regard to independent claim 38, the cited McLaughlin and Flessland references fail to teach or suggest that which is recited in claim 38. Flessland simply teaches commencing the calibration of a system when a probe 12 is positioned on a calibration device 100. No mention of restricting the viewing of a particular image based on viewing conditions which include the amount of time the display should have been turned to view a particular image is described or suggested in either reference. McLaughlin simply describes a standard calibration of a display procedure using a colorimeter. So even if we assume *arguendo* that the references somehow could be combined and there has not been any hindsight reconstruction of the claim in order to combine the cited references, the cited references when taken together would simply yield a system which provides for calibration of the display and that automatically can calibrate the system upon the occurrence of a physical act such as a probe touching a particular system part. Nowhere do we find the teaching of sending viewing conditions associated with an image that includes the amount of time a display should have been turned on before a particular image can be displayed. As such, claim 38 and dependent claims 39-42 which depend on claim 38 are believed to be in condition for allowance.

With regard to independent claim 43, see the comments made with regard to claim 38. In view of this, it is believed that claims 43 is in condition for allowance.

Respectfully submitted,



Attorney for Applicant(s)
Registration No. 29,134

Nelson A. Blish/tms
Rochester, NY 14650
Telephone: 585-588-2720
Facsimile: 585-477-4646

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.